

Serial No. 10/648,708

Amendment dated June 28, 2006

Response to Office Action of March 28, 2006

REMARKS

Claims 1-11 were presented in this application. Of these claims, claims 8-11 have been withdrawn as drawn to a non-elected invention. Claims 1, 2, 4 and 5 have been rejected as being anticipated by Spence U.S. Patent No. 4,919,888; claims 1 and 2 have been rejected as being anticipated by Loew et al. U.S. Patent No. 5,139,186; claims 1, 2 and 6 have been rejected as being anticipated by Vandivort U.S. Patent No. 1,750,072; and claims 1-3 have been rejected as being anticipated by Hoogland U.S. Patent No. 4,998,425. In addition, claims 4 and 5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Loew et al. in view of Spence, and claims 4, 5 and 7 have been rejected under §103(a) as being unpatentable over the combination of Vandivort in view of Overton, U.S. Patent No. 3,414,152.

Claims 1-7 have now been cancelled and new claims 12-17 have been added. Support for the new claims may be found at pages 2-5 of the specification, the original claims 1-7 and Figures 1-6. It is submitted that the new claims do not add new matter. To the extent that the rejections are applied against the new claims, they are respectfully traversed.

102(b) Rejection Based on Spence

Spence discloses a molded or formed sterilization container made from durable metal or plastic (Col. 4, lines 30-40). The sterilization container employs a base 12 and a lid 14, with the lid being held in sealing engagement with the base by means of heat shrinkable PVC belts. The belts have a loop 50 at each end for receiving an anchor pin which sits within a recess in the rim of the base. Seating of the anchor pin within the recess causes the lid to be held firmly in place over the base.

Spence does not teach or disclose a freight cover for covering and securing freight placed on a pallet, as now claimed in new claims 12-17. In particular, Spence does not teach or suggest that the top portion and sidewall portions should be made from a flexible, water proof material. Nor does Spence teach or suggest that the strap should be flexible or that it should have a length sufficient to permit the strap to be engaged with the pallet and pulled across the open bottom of the cover and then fastened to the second sidewall. In contrast, Spence discloses that his belts

Serial No. 10/648,708

Amendment dated June 28, 2006

Response to Office Action of March 28, 2006

are passed over the top of the lid, not over (or under) an open bottom, and that the belts have a length that is short enough such that the belts have to be stretched in order to permit the anchors on the ends of the belts to be seated in their respective recesses. See col. 6, lines 5-17. Further, Spence does not teach or suggest the use of a strap having at least one ringed opening therethrough. Rather, Spence teaches that an enclosed loop is employed at each end of the belt to retain an elongate anchor pin. See Col. 4, lines 55-64.

Accordingly, the new claims require that the top and sidewall portions of the cover be made from a flexible material, that the cover be sized to receive and cover freight on a pallet, that the elongate strap be flexible and of a length sufficient to permit the strap to be engaged with the pallet and pulled across the open bottom of the cover, and that the strap has at least one ringed opening therethrough. Because none of these limitations are taught or suggested by the Spence reference, Spence cannot anticipate the claims under 35 U.S.C. §102(b).

102(b) Rejection Based on Loew et al.

Loew et al. disclose an open tray having trapezoidal sides to accommodate ammunition boxes of varying sizes. A strap 24 is hooked through holes in the front and back panels of the tray to hold an ammunition box 22 in place. It is the Examiner's position that Loew et al. discloses the present freight cover if the open tray of Loew et al. were oriented in the upside down position. The Examiner's position is respectfully traversed.

Loew et al. does not teach or suggest that their tray could be used upside down; indeed doing so would defeat the very purpose of the Loew et al. tray -- to allow quick access to the ammunition while securely holding it in place. Further, Loew et al. discloses that the side panels of the tray are trapezoidal. If the tray were inverted, as suggested by the Examiner, the tray would still not anticipate the present claims because such a trapezoidal shape is not sized to fit over and cover the freight on a pallet, as required by the present claims.

Accordingly, it is submitted that Loew et al. does not anticipate the newly presented claims.

Serial No. 10/648,708

Amendment dated June 28, 2006

Response to Office Action of March 28, 2006

102(b) Rejection Based on Vandivort

Vandivort discloses a particular fastener system for collapsible shipping containers. The end walls of the collapsible containers have fasteners and headless nails driven into their edge portions, which is a clear indication that Vandivort does not teach or suggest that the first, second, third and fourth sidewalls should be made from a flexible material, as now required by the present claims. Nor does Vandivort teach or suggest that the bottom of his collapsible container can be eliminated so that the container has an open bottom, as now required by the present claims. Rather, Vandivort teaches that his container is first filled, and then secured with fastening means (Col. 1, lines 1-6), which could not occur if the container had an open bottom. Finally, Vandivort's fastening system employs fastening members that are driven into the sides of the container and have protruding heads that engage key slots in the straps to secure the straps to the container. Nowhere does Vandivort teach or suggest employing an opening in the second sidewall which receives a ring from an attachment device to secure the strap, as required by claims 13, 14, 16 and 17.

Accordingly, Vandivort does not anticipate the present claims.

102(b) Rejection based on Hoogland

Hoogland discloses a securing arrangement for securing a tool box to the back of a pick-up truck. According to Hoogland, the tool box has a bottom, a pair of end walls, a pair of sidewalls, and a center top section permanently secured transversely of the box to both side walls. See Col. 3, lines 1-16 and claim 1. Hinged closure doors are mounted to the center top section. A steel strap extends lengthwise over the top of the box and is held in place at the end walls by inserting a staple 38 mounted on each end wall through a slot on each end of the steel strap.

Hoogland, however, does not teach or suggest a cover having a top portion and first, second, third and fourth sidewalls made from a flexible material. Nor does Hoogland teach or suggest that the first, second, third and fourth sidewalls should be joined at their upper ends to the top portion. Rather, Hoogland teaches that only the front and back sidewalls are permanently

Serial No. 10/648,708

Amendment dated June 28, 2006

Response to Office Action of March 28, 2006

joined to the central cover section. Further, Hoogland does not teach or suggest that his tool box could or should have an open bottom, and be sized to fit over and cover freight on a pallet, as required by the present claims. Finally, Hoogland does not teach or suggest the use of a flexible strap, nor does Hoogland teach or suggest that the second sidewall should have an opening through the sidewall into which a ring can be inserted to lock the strap to the second sidewall. Rather, Hoogland teaches that his strap is a steel strap that is pressed to conform to the shape of the tool box, and further teaches that the strap is secured to the end wall by passing a padlock through a staple mounted to the side of the end wall, not an opening through the wall, as required by the present claims.

Accordingly, the new claims require that the cover be made of flexible material, that all of the sidewalls be joined to the top portion, that the cover have an open bottom end and be sized to fit over and cover freight on a pallet, and that the attachment device have a ring that is inserted through an opening in the second sidewall. Because these limitations are not taught or suggested by Hoogland, that reference cannot anticipate the claims.

103(a) Rejection Based on Loew et al. with Spence

The Examiner rejected claims 4 and 5 as unpatentable over Loew et al. in view of Spence. It is the Examiner's position that Loew et al. discloses the invention except for the use of a second strap, and that Spence discloses the desirability of employing a second strap.

Even if a second strap were employed with the Loew et al. ammunition container, the combination would not teach or suggest the presently claimed invention. As pointed out above, there are several deficiencies in both the Loew et al. and Spence references. Neither reference teaches or suggests forming the top and sidewalls from a flexible material, or that the top and sidewalls should be joined together such that the bottom is open. Nor do the references teach or suggest that the box-shaped structure formed by the top and sidewalls should be sized to fit over and cover the freight. Neither reference teaches or suggests that the strap should be of a length sufficient to permit the strap to be engaged with a pallet and pulled across the open bottom. Finally, neither reference teaches or suggests that the strap should have at least one ringed opening which receives the ring of an attachment device. Rather, both Spence and Loew et al.

Serial No. 10/648,708

Amendment dated June 28, 2006

Response to Office Action of March 28, 2006

use loops at the end of their straps to accommodate the attachment device. See element 50 of Spence and Figure 6 of Loew et al.

Accordingly, even if the teachings of Loew et al. and Spence were combined, as suggested by the Examiner, the combination would not render the present claims obvious.

103(a) Rejection Based on Vandivort and Overton

The Examiner rejected claims 4, 5 and 7 as unpatentable over the combination of Vandivort with Overton, U.S. Patent No. 3,414,152. It is the Examiner's position that Vandivort discloses the invention except for the use of a second strap, and that Overton discloses employing two intermediate straps, such that it would have been obvious to employ two straps with the Vandivort container.

To the extent the Examiner's rejection is applied to the newly submitted claims, it is respectfully traversed. As noted above, Vandivort does not teach the presently claimed freight cover having a top and side walls made of flexible material, or that the top and side walls are joined together to form a box-shaped structure having an open bottom, or that the second sidewall has an opening therethrough which receives a ring from an attachment device to secure the strap. These deficiencies are not satisfied by combining the teachings of Vandivort with Overton.

Overton also discloses a collapsible container made with interlocking rigid wood panels, not flexible material. The container employs top, bottom, side and end panels, and there is no teaching in the reference that the bottom panel of the container could be eliminated. Although Overton discloses employing multiple steel straps around the container, Overton does not teach or suggest that the straps should have at least one ringed opening, that the second sidewall should have an opening therethrough, and that the ring of an attachment device should be inserted through the opening in the second sidewall and through the ringed opening in the strap to fasten the strap to the second sidewall.

Accordingly, the deficiencies noted above with respect to Vandivort are not satisfied by combining Vandivort's teachings with those of Overton. Neither reference teaches or suggests a

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Serial No. 10/648,708
Amendment dated June 28, 2006
Response to Office Action of March 28, 2006

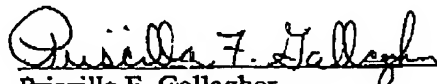
freight cover made from flexible material, having a top and sidewalls joined together to form a box-shaped structure with an open bottom, or that the second sidewall has an opening therethrough which receives a ring from an attachment device to secure the strap to the second sidewall. Thus, even if the teachings of Vandivort were somehow combined with those of Overton, the proposed combination would not render the present claims obvious.

For all of the above reasons, it is believed that claims 12-17 are neither anticipated by nor obvious in view of the prior art of record and that all of the Examiner's rejections have been overcome. Accordingly, favorable reconsideration of the application is respectfully requested

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: June 28, 2006

Respectfully submitted,


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